

PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-00-1

FEB - 3 2000

FAX AND CERTIFIED MAIL

To: James Lee Edwards, Governor
Absentee Shawnee Tribe of Oklahoma
2025 S. Gordon Cooper Dr.
Shawnee, OK 74801
Fax: (405) 275-5637

Respondent

1. Under the authority of 25 U.S.C. 2713(a) of the Indian Gaming Regulatory Act (IGRA) and 25 C.F.R. Part 575, the Chairman of the National Indian Gaming Commission (Commission) hereby provides notice of his intent to assess a civil fine against the Absentee Shawnee Tribe of Oklahoma, (hereinafter referred to as the "Tribe" or the "Respondent"), located in Shawnee, Oklahoma for violation of 25 U.S.C. § 2710(d) and 25 C.F.R. § 573.6(a)(11), as set forth in detail in Notice of Violation and Order of Temporary Closure, Reference NOV-00-1/CO-00-1, dated January 5, 2000, a copy of which is attached.

2. Under 25 U.S.C. 2713(a) and 25 C.F.R. 575.4, the Chairman may assess a civil fine, not to exceed \$25,000 per violation per day, against a tribe, management contractor, or individual, operating Indian gaming for each violation cited in a Notice of Violation issued under 25 C.F.R. § 573.3. The Thunderbird Entertainment Center gaming operation, located in Cleveland County, Oklahoma, is owned and operated by the Absentee Shawnee Tribe of Oklahoma.

In arriving at a proposed civil fine, the Chairman has considered the factors prescribed in 25 C.F.R. § 575.4, as follows:

- I. Economic benefit of noncompliance. The Tribe has stated its earnings averaged \$100,000 per month from the illegal operation of Class III machines, over a six month period ending in January 2000. Thus, at a minimum the Tribe's illegal activity earned it \$600,000 through January 2000, and may be expected to produce earnings thereafter at the same rate.
- II. Seriousness of the violation. This is a serious violation. The operation of

Class III gambling devices, without a tribal-state compact, is a violation of both the civil and criminal provisions of the Indian Gaming Regulatory Act (25 U.S.C. § 2710 and 18 U.S.C. § 1166), as well as the regulations of the National Indian Gaming Commission.

- III. History of violations. The Tribe does not have a history of prior violations.
- IV. Negligence or willfulness. The Tribe's violation in this case has been an intentional one. The Tribe is well aware of the Chairman's view that the so-called "skill stop" machines are Class III gambling devices, and that the Chairman has been engaged in an on-going effort to eliminate these machines from Indian gaming operations in Oklahoma. The Tribe nonetheless has chosen to operate these machines, and to profit thereby. To the extent that the existence of an administrative contest between the Chairman and some other tribes, involving classification of "skill stop" machines, may give the Respondent reason to risk operating such machines, there can be no such basis for illegally offering video pull tab machines for play.
- V. Good faith. The Tribe's violation of law has been an open one. Representatives of the Tribe have communicated frankly with the Chairman and with representatives of the NIGC to explain that the Tribe is, in part, motivated by a desire to compel a change in the law which governs Indian gaming in Oklahoma. Nonetheless, by virtue of the above-referenced closure order, CO-00-1, the Tribe was specifically directed to cease operating the illegal machines within twenty-four hours of its receipt of that order. The order was served on January 5, 2000. In addition, while Respondent has earned hundreds of thousands of dollars from its illegal activity, other tribes, whose governmental revenue needs are equally legitimate, chose to comply with the law and forego this illicit source of revenue.

THEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of \$750,000 (seven hundred and fifty thousand dollars) is assessed on the Respondent for operation of illegal gambling devices through January 6, 2000. From that date forward, a fine of \$6,000 (six thousand dollars) per day is assessed for each day the Tribe operates any of the class III gambling devices identified in the above-referenced Notice of Violation and Order of Temporary Closure. The above-described amounts represent the economic benefit of noncompliance realized by the Tribe as well as an appropriate balancing of the other factors cited above.

Under 25 C.F.R. 577.3, the Respondent may appeal the proposed fine to the full Commission within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, by submitting a notice of appeal to the National Indian Gaming Commission, 1441

L St., N.W., Suite 9100, Washington, D.C. 20005. The Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, the Respondent must file with the Commission a supplemental statement that states, with particularity, the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Respondent wishes to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The Respondent may waive his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated: February 3-2000, 2000.

Montie R. Deer
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Chairman
National Indian Gaming Commission